

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee,)
LLC, and Entergy Nuclear Operations, Inc., for)
amendment of their Certificates of Public Good)
and other approvals required under 10 V.S.A.)
§§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 &)
254, for authority to continue after March 21,)
2012, operation of the Vermont Yankee Nuclear)
Power Station, including the storage of spent-)
nuclear fuel)

Order entered: 7/22/2008

PREHEARING CONFERENCE MEMORANDUM

The Vermont Public Service Board ("Board") convened a prehearing conference in this proceeding on July 10, 2008. The following parties entered appearances:

John H. Marshall, Esq., and Robert A. Miller, Esq., Downs Rachlin Martin, PLLC, for Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. ("Entergy");

John Cotter, Esq., and Sarah Hofmann, Esq., for the Vermont Department of Public Service ("Department"); and

Judith L. Dillon, Esq., for the Vermont Agency of Natural Resources.

Also present at the prehearing conference were:

Kenneth C. Picton, Esq., for Central Vermont Public Service Corporation ("CVPS");

Brian Lederer, Esq., for IBEW Local No. 300 ("IBEW");

Peter H. Zamore, Esq., Sheehey Furlong & Behm, PC, and Donald Rendall, Esq., for Green Mountain Power Corporation;

Dan Scruton, for the Vermont Agency of Agriculture, Food & Markets;

James Moore, for the Vermont Public Interest Research Group ("VPIRG");

James Matteau, for the Windham Regional Commission ("WRC");
Sandra Levine, Esq., for the Conservation Law Foundation ("CLF"); and
Richard Czaplinski, *pro se*.

I. SCHEDULE

The primary topic of discussion was the schedule for this proceeding. The Department proposed a schedule, to which Entergy agreed. The proposed schedule was based upon the goal of the Board issuing a proposed order in April 2009, prior to the legislature's adjournment. Other persons raised concerns with aspects of the schedule. After discussion, we asked that parties submit comments on the schedule by the close of business on July 15. We issued a memorandum on July 11 reiterating the July 15 comment deadline.

In response, CVPS filed a letter stating that it had no objection to the schedule. The New England Coalition ("NEC"), WRC, and, jointly, CLF and VPIRG submitted letters raising concerns about the schedule. NEC is most concerned about the early portions of the schedule and recommends that we provide additional time in the early stages for discovery so that the proceeding is "front loaded with information." NEC also asks that public hearings be deferred until the public has had an opportunity to review the results of pending inspections and studies of the Vermont Yankee Nuclear Power Station ("Vermont Yankee"). NEC states that, if the Board schedules an early public hearing, it should schedule a second public hearing following those studies.

WRC expresses concern that the schedule may be overly compressed. WRC states that the desire to complete work in time to submit a report to the legislature should not drive the schedule since there is no requirement that the legislature act in 2009. In addition, WRC notes that some of the studies that are due to be submitted on October 15, 2008, and December 19, 2008, may not be completed on time, particularly since they have not begun. WRC adds that, even after the studies are submitted, the public needs adequate time to learn about and react to the findings. WRC also expresses concern that the proposed schedule would have a public hearing during the height of the summer vacation period. WRC recommends that any public hearing be deferred until there is opportunity for adequate public notice, and that the schedule provide adequate time for interested persons to consider whether to intervene.

CLF and VPIRG express concern that the proposed schedule does not allow for full consideration of all of the evidence. In particular they point to the fact that many studies will only be submitted on December 19th, so late that there would be inadequate time for discovery and testimony on them. They also note that the proposed schedule would limit public participation particularly since it would have only a single public hearing during summer vacation season. CLF and VPIRG also echo WRC's comments that state law does not require legislative action in 2009 or a preliminary Board order as the Department and Entergy request. In fact, CLF and VPIRG suggest that the issuance of a preliminary decision may be contrary to legislative intent. Finally, CLF and VPIRG assert that if the Department or Entergy were concerned about the timing, they could have requested that the Board start the proceeding sooner, as permitted by Section 9 of Act 189 (2008 Adj. Sess.), or the Board could have initiated proceedings more quickly.

We share many of the concerns raised by the commenting parties about the proposed schedule, and have taken them into account in setting the dates for public hearings and the deadlines for intervention; if necessary, we will consider holding an additional public hearing later in the process in Vernon. More broadly, we are concerned that the uncertainty over a possible power contract that may be completed in September and the content and scope of the studies contemplated by statute, make it difficult to assess whether the Department's proposal provides an adequate opportunity for a full examination of the issues raised by Entergy's petition. We expect that, after it is known whether a contract to sell power to Vermont utilities will be part of this proceeding, we will be in a better position to assess the reasonableness of the overall schedule.

Accordingly, at this time, we will establish the first part of the schedule (up through the filing of testimony by the Department and other parties). In addition, we have scheduled a status conference for October 1 to consider the establishment of the rest of the schedule based upon the results of the negotiations on a power contract. We will also reserve the two weeks for evidentiary hearings proposed by the Department (starting January 26, 2009).

We also want to address CLF's and VPIRG's suggestion that it was possible to start this investigation earlier. Under Section 248(e)(2) of Title 30, the Board could not initiate

proceedings until after July 1, 2008. CLF and VPIRG correctly point out that Act 189 allowed the Board to start earlier. However, the bill did not become law until mid-June. Given the late date at which the statutory change took effect, if we were to provide reasonable notice to potential parties, the Board could have accelerated the prehearing conference by at most a few days.

Finally, the Department's proposed schedule included a site visit. Given that the petition does not include any proposed construction, we are unsure as to the purpose of a site visit, and at this time we are not scheduling one. If any party believes a site visit would be useful, it should file a request for a site visit identifying specific locations to be visited and explaining the reasons for the site visit. Any request for a site visit must be filed by September 19, 2008.

August 1, 2008	Petitioners provide discovery responses from other cases: 7404; NRC 50-271-LR
August 18, 2008	Public hearing – Vernon – 7:00 p.m.
August 22, 2008	Deadline for Intervention Motions (Motions may be filed at any time prior to the deadline. Other parties shall file responses to such motions within 7-calendar days of the time the motion is filed.)
August 25, 2008	1st Round Discovery on Petitioners
September 12, 2008	Petitioners respond to 1st Round Discovery Questions
September 19, 2008	2nd Round Discovery on Petitioners; Deadline for requests for site visit
September 22, 2008	Public Hearing via Vermont Interactive Television (at all sites) at 7:00 p.m.
October 1, 2008	Status Conference
October 3, 2008	Petitioners respond to 2nd Round Discovery Questions
October 15, 2008	DPS & Intervenors prefile testimony including available pieces of the 30 V.S.A. § 254 Studies (primarily the pieces identified in § 254 (b)(2)(A)).

II. INTERVENTIONS

GMP and IBEW filed Motions to Intervene in advance of the prehearing conference. At the conference, no party objected to the Board granting these motions and the Board granted permissive intervention to GMP and IBEW. GMP's and IBEW's intervention shall be limited to the interests that they have identified.

III. Filing of Documents

Parties shall file an original and seven (7) copies of all documents (rather than the original and six copies normally required). In addition, parties must provide an electronic copy of all testimony, motions and responses, and briefs (e-mail submission is acceptable). If the electronic filings are submitted in .pdf format, they must be submitted in a form that permits the Board and other parties to search the document and extract text.

So ORDERED.

Dated at Montpelier, Vermont, this 22nd day of July, 2008.

<u>s/James Volz</u>)	
)	
)	PUBLIC SERVICE
<u>s/David C. Coen</u>)	
)	BOARD
)	
<u>s/John D. Burke</u>)	OF VERMONT

OFFICE OF THE CLERK

FILED: July 22, 2008

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)